

Remarks

Claims 1,2,4,9,11,12 and 43 are currently in the present application.

The Examiner has rejected all claims, under the first paragraph of 35 USC. §112, contending that in claim 1, the terms “gelatin”, “cartilage”, “amino sugars” and “glycosaminoglycans” cover large numbers of compounds and that one skilled in the art would require undue experimentation to formulate a composition using any particular compound within these groups.

First, Applicant points out that claims 4, 9, 11, 12 and 43, as amended herein, relate to compositions where the chondroprotective agent is selected from three specific materials and their salts (i.e., glucosamine, chondroitin, and S-adenosylmethionine). The examiner himself has admitted (paragraph 6 on page 4 of the office action) that these three compounds are well-known for the treatment of arthritis by those skilled in the art and well-exemplified in the present application and in the art. Accordingly, the rejection under 35 U.S.C. §112 should not apply to those claims.

With regard to claims 1 and 2 the rejection should not apply for the reasons set forth on pages 6-7 of Applicant’s appeal brief, dated December 18, 2002.

The examiner has also rejected all claims, under 35 U.S.C. §103, based on the Nutramex Laboratories ‘816, Florio ‘715, Martino ‘692, Burger ‘919, Morad ‘594, and Versalla ‘878 references.

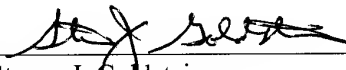
The claims of the present application have been amended to more specifically define the sweetener component of the beverage; that component must now include erythritol. No new matter is included by virtue of this amendment. In the office action, the examiner admitted that the broader version of claim 1 was novel – so this more narrow version clearly is also novel over the cited art. The present claim also would not have been obvious based on the disclosure of those references. None of the cited references disclose or suggest the combination of a

chondroprotective agent (and particularly not the three specific materials defined in claim 4) with erythritol. Erythritol has unique properties which make it useful in the compositions of the present invention. Specifically, in a beverage composition, the sweeteners tend to have to be used at relatively higher levels. This is particularly true with sugar alcohols, such as erythritol. The use of such higher levels of sweetener in a full beverage composition can cause the consumer gastrointestinal distress, which obviously is something the producer of a beverage composition would like to avoid. Since, erythritol is a small molecule, it passes through the body relatively easily and intact, and, as a result, it does not result in the gastrointestinal distress frequently found with other sugar alcohol sweeteners. Thus, it cannot be said that all sweeteners are equivalent and that the substitution of erythritol for another known sweetener is equivalent or obvious. In fact, the use of erythritol presents a particular benefit (as defined above) in the context of a sports beverage composition (of which large quantities can be consumed in a short period of time), which is what is claimed in the present application. In addition, the use of erythritol provides a desirable textural quality (a desirable mouthfeel) to the beverage, which is not obtained when other sweeteners are used. Accordingly, the combinations claimed in the present application would not have been obvious based on the references cited by the examiner and it is respectfully requested that the §103 rejection be withdrawn.

In light of the foregoing amendments and remarks, it is submitted that the claims currently pending in the present application are now in form for allowance. Accordingly, reconsideration and allowance of the claims, as amended herein, are earnestly solicited.

Respectfully submitted,

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